Jamilie Abu Nasir bin Abu Bakar & Anor v Nadaraja a/l Muthu

HIGH COURT (TAIPING) — CIVIL APPEAL NO 12–22 OF 1999
ZULKEFLI J
4 AUGUST 2000

Damages (Personal Injury or Death) — *Fatal accident — Dependency — Statutory multiplier reduced — Whether further deduction to be made for contingencies, accelerated payment and vicissitudes of life*

One Arumugam a/l Nadaraja ('the deceased') was involved in a road collision. The father of the deceased claimed for loss of dependency against the driver of the motorlorry ('the appellant'). The sessions court judge held that the appellant and the deceased were equally liable for the accident. The deceased was 26 years of age at the time of the accident and the judge allowed the claim for loss of dependeny for a period of seven years. The number of years purchase or the multiplier was reduced from the statutory fixed years of purchase of sixteen to seven years by the sessions court judge following the principles set out by the majority decision in the Supreme Court case of *Chan Chin Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233. The appellant appealed on both the issues of liability and quantum. On the issue of quantum the appellant submitted that the judge failed to take into account the Court of Appeal decision in the case of *Takong Tabari v Government of Sarawak & Ors* [1998] 4 MLJ 512 in making a one third deduction for contingencies, accelerated payments and other vicissitudes of life.

Held, dismissing the appeal:

(1) On the issue of liability the court found that the sessions court judge had not erred in fact and in law in arriving at his decision that the liability between the parties involved in the accident was to be apportioned on a basis of 50:50. There were sufficient evidence adduced to support the finding of facts made by the sessions court judge on the issue of liability and hence the court sitting as a court of appeal was not inclined to differ with such findings (see p 752G–I).

(2) The principles set out by the Court of Appeal in *Takong Tabari*'s case could not be applied to the facts and circumstances of the present case because in the present case the number of years purchase or the multiplier had already been reduced to seven years following the principles set out in the Supreme Court case of *Chan Chin Ming*. It would not be just and equitable to further reduce the sum awarded in the present case as all the factors of contingencies, accelerated payments and other vicissitudes of life must have been considered when the multiplier was reduced to seven years (see p 753C–D).

A **[Bahasa Malaysia summary**

Seorang bernama Arumugam a/l Nadaraja ('si mati') terlibat dalam satu kemalangan jalanraya. Bapa si mati menuntut kehilangan sara penanggung terhadap pemandu motor lori ('perayu'). Hakim mahkamah sesyen memutuskan bahawa perayu dan si mati sama-
B sama bertanggungjawab untuk kemalangan tersebut. Si mati berumur 26 tahun pada masa kemalangan dan hakim membenarkan tuntutan terhadap kehilangan sara penanggung bagi tempoh tujuh tahun. Jumlah tahun yang diperoleh atau pendarab dikurangkan daripada perolehan tahun tetap statutori sebanyak enam belas kepada tujuh tahun oleh hakim mahkamah sesyen mengikut prinsip-prinsip yang
C telah dibentangkan oleh keputusan majoriti Mahkamah Agung dalam kes *Chan Chin Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233. Perayu telah membuat rayuan terhadap kedua-dua isu liabiliti dan kuantum. Berhubung isu kuantum perayu menghujahkan bahawa hakim telah gagal untuk mengambil kira keputusan Mahkamah Rayuan dalam kes
D *Takong Tabari v Government of Sarawak & Ors* [1998] 4 MLJ 512 di dalam membuat potongan satu pertiga untuk kontingensi, bayaran lebih cepat dan lain-lain dugaan kehidupan.

Diputuskan, menolak rayuan:

E (1) Berhubung isu liabiliti mahkamah mendapati bahawa hakim mahkamah sesyen tidak khilaf dalam fakta dan undang-undang semasa tiba kepada keputusan beliau bahawa liabiliti antara pihak-pihak terlibat dalam kemalangan harus dibahagikan pada kadar 50:50. Wujud keterangan mencukupi yang telah dikemukakan bagi menyokong penemuan fakta-fakta yang dibuat
F oleh hakim mahkamah sesyen berhubung isu liabiliti dan justeru itu mahkamah yang bertindak sebagai mahkamah rayuan tidak cenderung untuk tidak bersetuju dengan penemuan sedemikian (lihat ms 752G–I).

(2) Prinsip-prinsip yang dinyatakan oleh Mahkamah Rayuan dalam
G kes *Takong Tabari* tidak boleh terpakai kepada fakta-fakta dan keadaan-keadaan dalam kes semasa kerana dalam kes ini jumlah tahuan yang diperoleh atau pendarab telahpun dikurangkan kepada tujuh tahun mengikut prinsip-prinsip yang dinyatakan dalam kes Mahkamah Agung *Chan Chin Ming*. Adalah tidak adil dan saksama untuk mengurangkan lagi jumlah yang diawardkan
H dalam kes semasa kerana kesemua fakta-fakta kontingensi, bayaran lebih cepat dan lain-lain dugaan dalam kehidupan telah dipertimbangkan apabila pendarab dikurangkan kepada tujuh tahun (lihat ms 753C–D).]

I **Notes**

For cases on dependency claims, see 6 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 299–310.

Cases referred to

Chan Chin Ming & Anor v Lim Yok Eng [1994] 3 MLJ 233 (folld)
Takong Tabari v Government of Sarawak & Ors and another appeal [1998] 4 MLJ 512 (refd)

Legislation referred to

Civil Law Act 1956 s 7(3)(iv), (d)

T Kaniamuthan (*VP Nathan & Partners*) for the appellant.
P Balachandran (*Syarilat Subbaiyah*) for the respondent.

Zulkefli J: The action under appeal in this case arose in consequence of a road collision that occurred on 27 September 1994 between a motorlorry No ABW 280 driven by the appellant/first defendant and a motorcycle No PY 6938 ridden by one Arumugam a/l Nadaraja, deceased ('the deceased rider'). The respondent/plaintiff is the father of the said deceased rider. The claim filed by the respondent is for loss of dependency and other damages.

The learned sessions court judge, Taiping in his judgment held that the appellant and the said deceased rider were equally liable for the said accident. The learned sessions court judge in assessing the claim for loss of dependency found and accepted the fact that the deceased rider was earning an income of RM1,500 a month. After having considered all factors including his daily expenditures, the learned session judge was satisfied that the deceased rider had contributed not less than RM600 a month to the respondent. As the deceased rider was 26 years of age at the time of the accident, the learned sessions court judge allowed the claim for loss of dependency for a period of seven years. The number of years purchase or the 'multiplier' was reduced from the statutory fixed number of years purchase of sixteen to seven years by the learned sessions court judge following the principles set out by the majority decision in the Supreme Court case of *Chan Chin Ming & Anor v Lim Yok Eng* [1994] 3 MLJ 233. The learned sessions court judge henceforth awarded a sum of RM25,200 with interest on the basis of 50:50 liability.

The appellant being dissatisfied with the decision of the learned sessions court judge appealed against the whole of the said decision. Having studied the appeal record and having heard the submission of both learned counsels for the appellant and the respondent I hereby dismissed with cost the appellant's appeal on both the issues of liability and quantum. On the issue of liability it is my finding that the learned sessions court judge had not erred in fact and in law in arriving at his decision that the liability between the parties involved in the accident is to be apportioned on a basis of 50:50. There is sufficient evidence adduced to support the finding of facts made by the learned sessions court judge on this issue of liability and hence this court sitting as a court of appeal is not inclined to differ with such findings.

On the issue of quantum on the claim of loss of dependency learned counsel for the appellant submitted that the learned sessions court judge

erred in law when in assessing dependency and having arrived at an award figure of RM25,200 he failed to take into account the Court of Appeal decision in the case of *Takong Tabari v Government of Sarawak & Ors and another appeal* [1998] 4 MLJ 512 in making a one third deduction for contingencies, accelerated payments and other vicissitudes of life. The Court of Appeal in *Takong Tabari*'s case, inter alia, held that the court is bound by the judgment of the majority in the Supreme Court case of *Chan Chin Ming & Anor v Lim Yok Eng*, which stated that as a matter of interpretation, if Parliament had intended to depart from the general system of law, it would express its intention with irresistible clarity, and as proviso (d) to s 7(3)(iv) of the Civil Law Act 1956 lacked such clarity, the common law practice of making deductions for contingencies, other vicissitudes of life and accelerated payments continued to be in force.

I am of the view that the principles set out by the Court of Appeal in *Takong Tabari*'s case in allowing a one third deduction for contingencies, accelerated payments and other vicissitudes of life cannot be applied to the facts and circumstances of the present case. This is so because in the present case the number of years purchase or the multiplier has already been reduced to seven years following the principles set out in the Supreme Court case of *Chan Chin Ming*. It can be said that the reduction in the multiplier or the number of years purchase made in the present case is equivalent to the deduction made for contingencies, accelerated payments and other vicissitudes of life as in *Takong Tabari*'s case whereby in that case the claim was made by the deceased wife for loss of support on the death of her husband as a result of a fatal accident. It is my view that it would not be just and equitable to further reduce the sum awarded in the present case as all these factors of contingencies, accelerated payments and other vicissitudes of life must have already been considered when the multiplier was reduced to seven years. I find support in this argument by reference to the said case of *Chan Chin Ming* wherein his Lordship Peh Swee Chin SCJ in delivering the majority decision of the Supreme Court at p 244D, inter alia, had this to say:

> A court can either take account of such contingencies in fixing the number of years purchase; or doing so on the lump sum after applying the number of years purchase to the basic figure. Either way is permissible.

Based on the above view it is therefore clear that only one of the two methods in reducing the multiplier can be applied to the present case by which it is either through reducing the multiplier as made in *Chan Chin Ming*'s case or by way of reducing the amount that has to be paid after applying the multiplier or the number of years purchase that should be used to the basic figure. Hence, in the circumstances of the present case this court cannot therefore accept the contention of the learned counsel for the appellant that a deduction of one third can be applied simultaneously at the same time when the multiplier or the number of years purchase had already been reduced from its statutory fixed number of years purchases of sixteen.

For the above stated reasons I therefore dismissed the appellant's appeal with cost. A

Appeal dismissed.

Reported by Jafisah Jaafar

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